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C O N F I D E N T I A L ISLAMABAD 004206

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TAGS: [PGOV](#) [PK](#)

SUBJECT: SUPREME COURT RULES FOR MUSHARRAF

REF: A. ISLAMABAD 4024

[1](#)B. ISLAMABAD 4167

Classified By: Ambassador Anne W. Patterson, Reasons 1.4 (b), (d)

[1](#)1. (C) Summary: In a complex decision, Pakistan's Supreme Court ruled September 28 six to three to dismiss the petitions challenging Musharraf's right to run for re-election while concurrently holding the offices of President and Chief of Army Staff. However, the decision was based on procedural grounds which could open the door for additional legal challenges after the Election Commission rules September 29 on the eligibility of Musharraf to be a candidate. Since the Court did not technically rule on the uniform issue, Musharraf could theoretically decide to continue as Chief of Army Staff despite his public pledges to resign from the Army. PM Aziz issued a statement saying the ruling cleared the way for Musharraf's re-election; opposition leaders condemned the decision. The decision could be appealed as early as Monday. End summary.

[1](#)2. (C) On September 29, a nine-member bench of the Supreme Court ruled 6-3 to dismiss pending petitions that challenged Musharraf's ability to run for re-election while concurrently holding the offices of President and Chief of Army Staff. The Court dismissed the cases on procedural grounds that it can only hear matters of fundamental rights, and these petitioners did not bring a case based on their fundamental rights. Both the majority and minority cited this same issue without elaborating on their legal reasoning. Typically, the Court issues the full legal opinions on a case weeks after the decision is announced.

[1](#)3. (C) Legal experts are interpreting this ruling as sending the issue back to the Election Commission, which amended its election rules on September 16 to allow civil servants (e.g., Musharraf) to contest the presidential election (Ref A). Assuming the Election Commission declares Musharraf as an eligible candidate on September 29, the government's ruling coalition has enough votes in the National and Provincial Assemblies for the simple majority required for Musharraf to be elected on October 6 (Ref B).

[1](#)4. (C) Speaking from an emergency cabinet session, Prime Minister Aziz lauded the decision, saying that it cleared up any doubts about Musharraf's eligibility. Opposing counsel erupted in protest upon hearing the decision, and opposition parties were quick to call into question the credibility of

the Court. However, as the opposition analyzes the decision, it may revise its views. It appears that the decision allows approved candidates to have a legal basis for future challenges to Musharraf's eligibility.

¶15. (C) Comment: Legally, the decision allows Musharraf to run for re-election on October 6 in uniform. Since the Court did not technically rule on the uniform issue, Musharraf could theoretically decide to continue as Chief of Army Staff despite his public pledges to resign from the Army.

¶16. (C) The Supreme Court has ruled on a technicality, which gives Musharraf a victory while keeping his legal status in question. The Court avoided a negative verdict, which could have provoked a constitutional crisis and an extreme government reaction. We expect the challengers to be back in court as early as Monday after the Election Commission rules that Musharraf is eligible to be a candidate. End comment.  
PATTERSON